

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.100 of 1997 (O&M)
Date of Order:09.03.2018**

Jhajhan and others

..Appellants

Versus

Mandir Radha Krishan Ji Maharaj and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate,
for the appellants.

Mr. Adarsh Jain, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in regular second appeal against the judgment and decree passed by the learned first appellate court.

Plaintiff, which is a religious institution, filed a suit claiming that they are “Dholidars” (a grant given by the owner) and the Gram Panchayat in collusion with defendant no.1 has got passed an order at their back making a provision of passage through the land in its possession. It was further pleaded that defendant no.1 previously also filed a petition under Section 42 of the East Punjab Holding(Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act'), which was dismissed on 29.03.1977. However, subsequently a fresh petition was filed under Section 42 of the Act and the Gram Panchayat colluded with the defendant made a provision of passage by exchange of land.

Learned trial court recorded a finding on all issues in favour of the plaintiff and held that the order passed by the authorities while

exercising powers under the Act of 1948 is illegal. However, trial court dismissed the suit on the ground that the civil court does not have jurisdiction. Learned trial court further found that the order passed by the Director Consolidation is without hearing, the plaintiff, who is in possession and is adversely affected by the order. However, the learned trial court recorded that hearing of the plaintiff, was not necessary because the owner has been heard.

First appeal preferred by the plaintiff was allowed after re-appreciation of the evidence available on the file. The court held that hearing of the plaintiff was necessary as it would be effected party because of the order passed by the Director Consolidation. Learned first appellate court further found that once first application filed for the same purpose was dismissed in the year 1977, then fresh application under Section 42 of the 1948 Act was not maintainable.

Learned first appellate court further held that since the order is in violation of principle of natural justice, therefore, the order passed by the Director Consolidation is void *ab initio*. Hence the civil court has jurisdiction to entertain the suit and to declare the order *void-ab-initio*.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants has vehemently argued that as per Section 44 of the Act, civil court has no jurisdiction to entertain any suit to obtain the decision or order in respect of matter which the State Government or any officer by this Act is empowered to determine and decide.

No doubt, there is a bar to the jurisdiction of the civil court. However, once the order has been found to have been passed without giving opportunity to the plaintiff to be heard who is adversely affected party, the order was clearly void *ab initio*.

Still further as per Rule 18 of the Rules framed under the Act, limitation for filing an application under Section 42 of the Act is 6 months. Consolidation of holdings were carried out in the year 1956. After more than 30 years, learned Director Consolidation had no jurisdiction to entertain the application under Section 42 of the Act.

In view thereof, there is no scope for interference in the order passed by the learned first appellate court.

The regular second appeal is dismissed.

March 09, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No